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IN THE

UNITED STATES SUPREME COURT

No. _____

OCTOBER TERM 1981

STATE OF MINNESOTA,

Petitioner,

v.

JOHN HENRY BROWN,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MINNESOTA

PETITIONER'S SUPPLEMENTAL APPENDIX

WARREN R. SPANNAUS
Minnesota Attorney General

TOM FOLEY
Ramsey County Attorney

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STATE V. BROWN
Cite as Minn., 313 N.W.2d 207

STATE of Minnesota, Respondent,

v.

John Henry BROWN, Appellant.

No. 81-306.

Supreme Court of Minnesota.

Dec. 17, 1981.

Appeal from District Court, Ramsey County; Sidney P. Abramson, St. Paul, Judge.

C. Paul Jones, Public Defender, and Susan K. Maki, Asst. Public Defender, Minneapolis, for appellant.

Warren Spannaus, Atty. Gen., St. Paul, Thomas W. Foley, County Atty., Steven C. De Coster, Asst. County Atty., St. Paul, for respondent.

Considered and decided by the court en banc without oral argument.

SHERAN, Chief Justice.

Appeal from a judgment of conviction of criminal sexual conduct in the first and second degree.

After the appeal was taken, the United States Supreme Court filed its opinion in Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981). Because this decision amplifies Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), it applies to this case. We therefore remand the matter to the district court for reconsideration of defendant's motion for a new trial in light of Edwards.

STATE V. BROWN
Cite as Minn., 317 N.W.2d 714

STATE of Minnesota, Appellant

v.

John Henry BROWN, Respondent.

No. 82-144.

Supreme Court of Minnesota.

April 6, 1982

Defendant was convicted before the District Court, Ramsey County, Sidney P. Abramson, J., of criminal sexual conduct in the first and second degree, and he appealed. The Supreme Court, 313 N.W.2d 207, remanded case. On remand, the District Court, Ramsey County, Sidney P. Abramson, J., granted defendant a new trial, and the State appealed. The Supreme Court, Scott, J., held that the district court correctly concluded that the United States Supreme Court's

decision in Edwards v. Arizona that once a suspect has asserted right to counsel, the police may not resume questioning until counsel has been made available required a new trial.

Remanded.

1. Courts 100(1)

United States Supreme Court's holding in Edwards v. Arizona that once a suspect has asserted his right to counsel, police may not resume questioning of a suspect on their own initiative until counsel has been made available applied retroactively to defendant's case, and thus district court correctly concluded that this holding required new trial of defendant on charges of criminal sexual conduct.

2. Criminal Law 1024(7)

To extent that order for a new

trial was an order suppressing evidence, order had to be viewed as pretrial order concerning retrial which state had right to appeal. 49 M.S.A. Rules Crim. Proc., Rule 29.03.

Syllabus by the Court

District Court correctly concluded that United States Supreme Court's decision in Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981), requires new trial of defendant on charges of criminal sexual conduct.

Warren Spannaus, Atty. Gen., Thomas W. Foley, County Atty., and Steven DeCoster, Asst. County Atty., St. Paul for appellant.

C. Paul Jones, Public Defender, and Susan Maki, Asst. Public Defender, Minneapolis, for respondent.

Considered and decided by the court en banc without oral argument.

SCOTT, Justice.

This is an appeal by the state pursuant to Minn. R. Crim. P. 29.03[1] from an order of the district court granting defendant a new trial on charges of criminal sexual conduct in the first and second degree.

Defendant was convicted by a jury in 1980 of the charges in question on the basis of evidence that he sexually penetrated and had sexual contact with

1. That rule provides that "The prosecuting authority may appeal to [this court] in any felony or gross misdemeanor case, as of right, from any pretrial order of the district court ... except an order dismissing a complaint for lack of probable cause to believe the defendant has committed an offense or an order dismissing a complaint pursuant ot Minn. Stat. §631.21."

the daughter of friends of his. Sentenced to 20 years in prison, defendant appealed to this court contending primarily that the trial court had erred in denying a motion to suppresss his confession. That motion was based on the fact that the confession was obtained after police initiated an interrogation of defendant after defendant twice earlier had said that he wanted counsel. In support of his claim for a new trial, defendant's attorney cited Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981), which held that once a suspect has asserted his right to counsel the police may not resume questioning the suspect on their own initiative until counsel has been made available to the suspect. The state argued that Edwards

deserved only prospective application and therefore did not apply to defendant's case.

Our opinion remanded the case to the trial court, stating as follows:

> Appeal from a judgment of conviction of criminal sexual conduct in the first and second degree.
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> After the appeal was taken, the United States Supreme Court filed its opinion in Edwards v. Arizona, 451 U.S. 477, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1980). Because this decsion amplifies Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), it applies to this case. We therefore remand the matter to the district court for reconsideration of defendant's motion for a new trial inlight of Edwards. (Emphasis added).

State v. Brown, 313 N.W.2d 207 (Minn. 1981).

[1] The trial court concluded from the clear language used by the

Court in Edwards that the Court saw its holding not as establishing a new rule but as reconfirming what the Court had said in Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). We agree and note that the United States Supreme Court itself has remanded a number of cases for reconsideration in light of Edwards, something which further supports the view that Edwards is not to be given only prospective application. Williams v. Ohio, 452 U.S. 935, 101 S.Ct. 3073, 69 L.Ed.2d 949 (1981); James v. Illinois, 451 U.S. 1014, 101 S.Ct. 3001, 69 L.Ed.2d 386 (1981); Wantland v. Maryland, 451 U.S. 1014, 101 S.Ct. 3001, 69 L.Ed.2d 386 (1981); Monroe v. Idaho, 451 U.S. 1014, 101 S.Ct. 3001, 69 L.Ed.2d 385 (1981); Leuschner v.

Maryland, 451 U.S. 1014, 101 S.Ct. 3001, 69 L.Ed.2d 385 (1981); White v. Finkbeiner, 451 U.S. 1013, 101 S.Ct. 3000, 69 L.Ed.2d 385 (1981).

[2] The only other issue raised by this appeal concerns the appealability under Minn. R. Crim. P. 29.03 of the order for a new trial. To the extent that the order is an order suppressing evidence, the order should be viewed as a pretrial order concerning the retrial which the state has a right to appeal under the rules.

Remanded.

No. Sp. Ramsey County Scott,J.

State of Minnesota,

Appellant,

Endorsed

82-144 vs. Filed April 6, 1982

John McCarthy,Clerk

John Henry Brown Minnesota Supreme Court

Respondent.

S Y L L A B U S

District court correctly concluded that United States Supreme Court's decision in Edwards v. Arizona, 101 S.Ct. 1880 (1981), requires new trial of defendant on charges of criminal sexual conduct.

Remanded.

Considered and decided by the court en banc without oral argument.

O P I N I O N

SCOTT, Justice.

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